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Dear Ms Delwa,

NETFLIX SUBMISSION ON THE DRAFT WHITE PAPER ON AUDIO AND AUDIOVISUAL CONTENT SERVICES POLICY FRAMEWORK: A NEW VISION FOR SOUTH AFRICA 2020

We welcome the opportunity to share our perspectives on the Draft White Paper on Audio and Audiovisual Content Services Policy Framework: A New Vision for South Africa 2020 ("the draft White Paper").

We commend the efforts of the Department of Communications and Digital Technologies ("the DCDT"), and in particular Minister Stella Ndabeni-Abrahams ("the Minister"), in publishing the draft White Paper to align broadcasting policy and legislation with international best practice; respond to socio-economic imperatives; and endeavour to bring the policy frameworks for the audio and audiovisual content services sector better in line with the advancements of the 4th Industrial Revolution ("4IR").

Netflix is committed to working with policymakers and other stakeholders on policy initiatives to advance the creative industries in South Africa. Our submission on the draft White Paper seeks to provide the DCDT with our views on select aspects of the draft, and to provide the DCDT with an overview of the significant role Netflix has already been playing in the South African audiovisual content services industry. While these submissions are limited to issues of immediate relevance for Netflix, we welcome any opportunity to engage further with the DCDT and hereby state our willingness to participate at all stages of the policy dialogue in respect of the South African audiovisual sector.

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Executive Summary

We have identified the following key concerns, in relation to the draft White Paper. These, together with Netflix's suggestions, are as follows:

1. **Licensing requirements for audiovisual content services**: Netflix suggests that online content service providers be required to simply ***notify the regulator*** and be bound to ***appropriate regulatory obligations*** as determined by the Films & Publications Board (FPB), rather than needing to obtain an individual or class licence in order to operate in South Africa. This is in consideration of the following:
    - Further clarity is needed on the objectives that will be met by imposing a licensing requirement for online content service providers. The fact that linear broadcasters currently require licences does not necessarily mean that online content service providers should similarly require licences.
    - Consideration should be given to the fact that there are alternative policy levers for achieving policy goals without the added layer of complexity that imposing licensing obligations on all audiovisual media providers would create - to illustrate, not imposing a licensing requirement does not mean that appropriate regulatory obligations cannot be observed by providers.
    - The rationale behind requiring telco operators that build out networks, in some instances use high-demand spectrum, and operate equipment to provide services, and linear broadcasting services that have particular public interest responsibilities because of their limited numbers, do not apply to online content providers.
    - A licensing framework is not necessarily appropriate for online content service providers given the nature of the services provided and overall business model.
    - A licensing requirement raises barriers to entry and gives regulators wide discretion to determine who is "suitable" to be granted a licence or not. It is not clear why this is necessary at this inflexion point in the development of South Africa's AV sector, considering that heavy touch regulation is more likely to hinder expeditious growth and innovation than encourage investment.
    - If online content providers are required to hold individual or class licences under the Electronic Communications Act 2005 ("ECA") and are also required to register as distributors and classify content or obtain a self-classification exemption under the Films and Publications Act 1996, as well as having to comply with the broadcasting code that applies to broadcasters (as suggested in

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the draft White Paper), the regulatory burden that will be imposed on them will be far greater than what broadcasters have to comply with currently - given that broadcasters do not have to register with the Film and Publication Board ("FPB") or classify their content (as they are specifically exempted from doing so). Netflix does not believe that this is what is intended.

- Even in the absence of specific regulatory compulsion at the moment, Netflix is already making significant industry, enterprise and supplier development contributions through content and production investments, skills development and job creation. We are also adhering to the terms of the co-regulatory arrangement of the FPB for online content providers. We believe AV sector policy proposals should incentivize content providers to voluntarily undertake these types of initiatives. If they are deterred from doing so (albeit unintentionally) by the introduction of overly-prescriptive regulatory models, significant benefits to the ecosystem may be lost.

2. **Local content quotas**: Netflix suggests that rather than imposing a local content quota in proportion to the video catalogue of an on-demand content service provider (OCS), the Whitepaper should be revised to focus on incentivizing content providers to make ***investments*** in local content production, which is one of the objectives of any local content obligation. We would also like to note that comparisons which may be drawn between South Africa and regions like the EU which has introduced a 30% local content obligation, ignore fundamental differences between the two jurisdictions which render the mandatory quota a less effective approach for the South African market. This is in view of the following considerations:
    - Policy solutions narrowly focused on local content production alone may be counter-productive to broader objectives to enhance the growth and wellbeing of the audiovisual sector. Research has found that "overly onerous content regulation could result in quantity over quality of local content, when fixed production budgets need to be stretched to meet content quotas, and the industry rushes simply to meet these requirements instead of focusing on remaining competitive."[1] This approach would also be inconsistent with our shared goal of bringing quality South African content to a global audience. Not only would low quality content show the South African industry in a poor light, it would also place South African content at a disadvantage with viewers around the world whom we have found show a preference for higher quality content because they have to choose from thousands of competing titles in our global catalogue.
    - The practical viability of a local content quota needs to be considered. Quotas imposed in regions like the EU (such as the 30% European content requirement prescribed by the AVMSD) may be wholly inappropriate for the South African context. The EU 30% local content quota for example is fulfilled by content from across Europe as a whole (serving 450 million people) rather than local content of only one Member State.
    - It should be considered that content quotas often miss the mark and do not necessarily achieve the desired effect. According to the London school of Economics for instance, "European quotas structured to increase the quantity of European works and protect the audiovisual production industry seem to be

[1] AlphaBeta - *ACMA, Enduring concepts. Communications and Media in Australia, November 2011, p7.*
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missing the mark, except in that they may encourage more national content on television. Nor are national quotas likely to be supporting the development of independent production or jobs in the domestic creative industries as television stations appear to meet quota requirements with cheap self-produced production."[2]

- The level of development which the local AV sector has attained is also relevant when considering a local content quota. There is usually sufficient local content available to fulfill the implementation of a quota in countries that choose this approach. Even with the best intentions, it is improbable that the South African market can make available at the same time enough quality local content to different OCS (who collectively have tens of thousands of titles in their video catalogues) that would enable them fulfill a 30% proportion on their respective services. The position is different for broadcasters which make far less content available.
- There is a risk that the imposition of a strict local content requirement could have the opposite effect of making online content providers limit the total amount of content that they provide in their South Africa catalogues, in order to meet up to the 30% quota, defeating the objective of stimulating content production in the country. This would in turn make these services less attractive to subscribers, meaning that there would ultimately be less incentive to make more local content.
- As detailed below, although not legally mandated to do so, Netflix is heavily invested in growing South Africa's local creative industry. This investment is in line with our model which is predicated on investing in local partners and creatives, and using our global service to make these authentic (South African) stories available to audiences around the world. Netflix [already] invests significantly in local content, and in response to consumer demand, our investments in South African content is projected to grow exponentially in the coming months and years. Given the practical difficulties, the proposals in the draft White Paper could well lead to lessened investment, if retained in their current iteration which inadvertently elevate quota over quality.

Introduction: Netflix in South Africa

Netflix is a leading streaming entertainment service with members in about 190 countries enjoying TV series, documentaries and feature films across a wide variety of genres, languages and devices. Members can choose what they want to watch and watch as much as they want, anytime, anywhere, on any internet-connected screen. Members can play, pause and resume watching, all without commercials or commitments. Our success is predicated on bringing the best stories from South Africa and other countries around the world to our members. To do this, we work closely with local producers and storytellers to bring their new ideas to light, and to provide a second distribution window for previously created titles.

Netflix launched in South Africa in 2016. Since our launch, Netflix began working with South African creators and distributors to bring high-quality series and films that showcase the best of South Africa's creativity and talent to our global audience. We've invested in 60+ licensed titles, and commissioned multiple Netflix Original South African series, such as Queen Sono, How To

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[2] "Content quotas: what and whom are they protecting?" - Sally broughton Micova; version available at: http://eprints.lse.ac.uk/57843/ Available in LSE Research Online: October 2014

Ruin Christmas: The Wedding and Blood & Water. These two in particular are examples of successful Netflix content produced in South Africa and enjoyed by millions of members all around the world. As at December 2020, there were 70+ South African films and television series available on Netflix, and [our members have been delighted by the ability to experience South African storytelling and culture].

Each Netflix production in South Africa supports local businesses. When a Netflix Original is commissioned, there is opportunity for writers, directors, actors, stylists, and make-up artists, as well as a long list of industries and trades that make the production of a complex series or film possible. There's also a multiplier effect with any investment: the economic impact of each of our projects in South Africa is several times greater than the actual dollars invested. Between 2016 and 2020, Netflix has invested an estimated ZAR 800+ million in South African shows, creating 1,800+ jobs in the process.

Netflix spearheads showcasing the best-in-class licensed content made by South Africans or made in South Africa, including the first local Netflix Film on the South African service, *Catching Feelings*, which was acquired and launched globally on the Netflix service in May 2018. We also invested in multiple new and library licensed titles that are beloved by South Africans - including *Seriously Single, Tsotsi, iNumber Number, The Forgotten Kingdom, Paradise Stop, Blood Lions, Liefling, Pretville, Die Ontwaking, The Assignment, Seun, How to Steal 2 Million, Copposites, Blitz Patrollie, A Lucky Man, Love by Chance, Skeem, French Toast; Eintlik Nogal Baie and 8*, with more to be added in coming months.

In 2021, our investment in South African content will continue to grow with Season 2 of Blood & Water and new original local content including the upcoming dance drama series, JIVA!

Netflix at a glance

Our model: On-demand viewing - members choose what they watch; our revenues are derived from monthly subscriptions only - no advertisements; we maintain a fully curated library with unlimited viewing for members; our subscribers can cancel anytime; and we are not a digital marketplace connecting buyers and sellers - we produce great entertainment content and make it directly available on our service for our members to subscribe.

Our commitment to South Africa:

- ZAR 800+ million invested on South African titles from 2016-2020;
- 1800+ jobs created for cast & crew to date;
- 70+ South African titles available on Netflix as at YE2020;
- ZAR 1.5+ billion invested in South Africa between 2017 and 2021, covering our spend on South African titles (both licensed and Originals) and also Netflix's international productions in South Africa

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- ZAR 8.3 million spent on Covid relief fund for TV and Film industry worker - 555 beneficiaries endowed ZAR15000 each

Our local partnerships

- ZAR 3.5+ million invested in skills building programs for 50 beneficiaries in South Africa (both Netflix direct training and through local partnerships with South African producers & NGOs)
- ZAR 8.3 million Industry Hardship Fund phase II for 555 beneficiaries (upcoming)
- ZAR 5+ million Netflix endowment fund for aspiring undergraduate AV scholars and Black filmmakers in South Africa (upcoming)
- Multi-title partnerships with local producers/talent including Gambit Films, Burnt Onion, DiPrente, Indegenous Films, Gravel Road, Ferguson Films, AAA, TriggerFish, etc (2016-2021)
- NFVF Multi-title partnership - Netflix will match ZAR 14 million investment by NFVF to support filmmakers in South Africa
- Partnership with Durban Film Mart, Gauteng Film Commission, Reelness Institute on audio visual sector development initiatives (2019-2020)
- Partnership with MultiChoice to increase consumer access to local content (2020)

Our position as a responsible business investing in South Africa

Netflix believes all players in the ecosystem have a role in providing financial support for the local film and television production industry, and that the most effective way this can be achieved is through organic investment in local content driven by national demand as well as a larger, more global audience. We're not averse to paying our fair share of taxes in countries where we derive value, provided such taxes are consistent, administrable, and do not amount to a double taxation of the same profit. This is why we're actively supporting the OECD effort to put in place a globally consistent measure that will ensure equitable distribution of taxes paid by multinational companies around the world. Currently, Netflix remits VAT in South Africa.

Committed to bringing South African content to the world

- Netflix is partnering with South Africa Tourism to promote cultural affinity with South African content and heritage amongst our 200+ million viewers worldwide
- We're helping local titles like Blood & Water succeed globally - recorded 14 million views of the title outside of South Africa
- In December 2020, Netflix made it possible for our members around the world to see South African content on their homepage more than 1.2 billion times

Alignment with policy objectives of the draft White Paper

We commend the government of South Africa's identification of the creative industries as "critical levers to economic growth and nation building". We welcome proposals to create an enabling policy environment that will address avenues for increased support to the creative industries and local content producers. We note, as well, the Presidential Employment Stimulus Package, which highlighted the sector as a particularly vulnerable yet important sector to South Africa's economic recovery. Netflix aligns with the national goal to enhance the audiovisual sector and expedite its growth and contribution to the broader economy, and we wish to highlight the following areas in which Netflix is **already supporting the public policy objectives** of the DCDT as advanced in the draft White Paper.

Promoting local content, South African culture & creativity

There has never been more opportunity for South Africa's creative sector. Viewers have the ability to view high quality content on a wide variety of services[3]. The launch of new local and global streaming services has been one piece of this, but the increased competition overall has meant a growing demand for high quality programming delivered in new and innovative ways.

Video services have historically been bound by a linear program schedule and reliance on advertising or ticket sales. This has meant putting a premium on airing content that will appeal to the widest audience during times they can attract the most viewers at the lowest price. Oftentimes this meant acquiring second-run content from Hollywood that was less expensive and already had proven success.

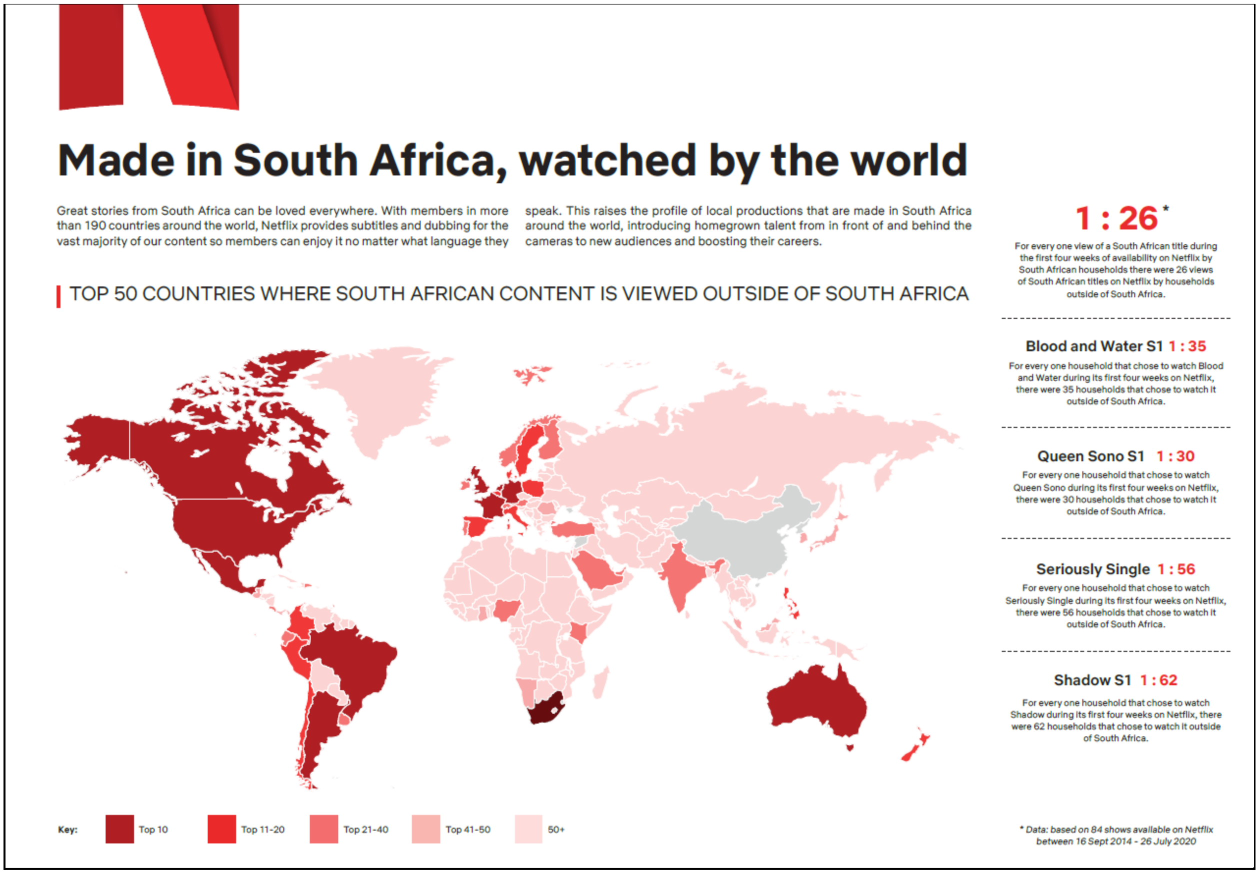
Online business models such as Netflix's depend instead on consumers consistently finding content to watch amid a plethora of choice. This means Netflix puts considerable effort towards finding and offering the most creative, innovative, and high quality storytelling available. Netflix has found success in a model that rebuffs the industry's historic focus on Hollywood content; we have built an audience in South Africa and globally by finding and creating the best stories working with local creative partners and producers from countries around the world and sharing these new stories -- content that previously was reserved for local audiences -- with a global audience.

We believe South Africa is well placed to meet this demand, with an audiovisual sector that has a vibrant and rich course of creativity and skills which have enormous potential to grow and contribute even more to the broader economy and in particular to support the recovery that is underway in South Africa. With a thriving ecosystem of talented creators, producers, writers, actors and crew, South African content is making a mark on the world stage. We recognize the powerful force of South African arts and culture as a driver of transformation on different levels, and we would like to be a part of that goal.

Netflix believes that South African stories are highly unique, yet have the power to resonate universally, and we are committed to support in showcasing the best of South African culture and storytelling to a global audience. It's why we're making a long-term commitment to the country by investing in - and supporting local storytellers to bring their unique stories to the world - especially stories that didn't previously get told because linear TV had limited shelf space. Working hand-in-hand with local industry, Netflix has been giving South African content creators the opportunity to reach audiences all around the world so that more people can experience South African storytelling and cultures. Below is a snapshot of how Netflix has aided South African titles in traveling the world on our service.

[3] A plethora of audiovisual content services is accessible to viewers - including linear TV, pay TV, DSTV/Multichoice,Showmax, TikTok, HBO Max, Disney+, Prime Video, Fortnite, DVD, YouTube, etc

Mzansi to the World



Human capital development and sector skills building

In our extensive work with creative sectors spanning the globe, Netflix has found that, around the world, there is a scarcity of writers, showrunners and key behind-the-scenes roles needed to fulfill the demand for quality content. With an initial global budget of USD 10 million, we plan to help bridge the gap by developing the skills of hundreds of creative professionals each year, on an ongoing basis.

We welcome the opportunity to engage the DCDT on some of our recent initiatives. One such example is our partnership with the Realness Institute (a non-profit organisation committed to fostering a new wave of African storytelling), where we launched an Episodic Content Development Lab for writers in South Africa, Kenya and Nigeria with film and TV experience in any genre or language. The program will ultimately select six writers to work on projects developed and commissioned by Netflix over a three month period.

This is an example of one of the ways in which Netflix supports the creation of an employment pipeline in the creative sector, while helping to build the capacity required to boost employability of creatives in the audiovisual content industry. We are available to engage the government of South Africa further regarding partnership opportunities in this critical area.

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Protection of children from harmful content

We support the objective of the DCDT to ensure the protection of children from inappropriate content that may impair their physical, mental or moral development.

Netflix invests heavily in South African kids' content because parents find value in Netflix as a source for children's entertainment. About half of Netflix members globally have watched kids programming. This is why we have invested in a wide variety of kids' and family films and TV shows all over the world - including animated films like Mama K's Team 4; the first original African animated series produced by Cape Town-based Triggerfish Animation Studios and leading kids' entertainment specialist CAKE.

Netflix invests heavily in measures to preserve an environment where members feel comfortable using our service with their children. We **give parents the controls they need to make the right decisions for their families**, and we're constantly updating and improving those controls, based on feedback from our members. This includes a dedicated Kids profile included by default with every new account, which features age appropriate content. Parents can also:

- PIN protect individual profiles to help prevent kids from using them;
- Tailor their kids Netflix experience by filtering out titles that are not appropriate for their age. We've built these filters using country ratings so they are more intuitive;
- Remove individual series or films by title. When this filter is used, the blocked title(s) won't show up anywhere in that profile;
- Easily review each profile's setting using the "Profile and Parental Controls" hub within account settings;
- See what their kids have been watching within the profile created for them; and
- Turn off auto-play of episodes in kids' profiles.

Every Netflix subscriber can add these controls to their profile by going to account settings on their mobile or laptop.

Effective self-regulation lessening the administrative burden to FPB

Netflix also **supports the protective objective of online content classification, as currently administered by the** FPB. Efficient classification is critical to ensuring our members in South Africa are able to watch Netflix content, as we add thousands of hours to our South African catalogue each month. As Netflix increases its investments in content, more and more titles will need to be given a classification. However, there are significant obstacles associated with classifying large volumes of content and processing delays as a result of submitting content for classification could result in content being premiered later in South Africa than in other countries.

This is why, based on the success we've had in implementing quality content classification through our comprehensive ratings system, we entered into an online distribution agreement with the FPB in terms of the general exemption provisions of the current Films and Publications Act. This agreement provides for a co-regulation model: it exempts Netflix from the requirement to submit content to the FPB for classification; and outlines the process by which Netflix classifies content, in accordance with the guidelines published by the FPB. Netflix is currently in the process of adapting our classifications to be consistent with the Guidelines for the Classification of Films and Interactive Computer Games published under the Films and

Publications Act ("the FPB guidelines"). Netflix was only able to achieve this through the reliability and quality assurance of our self-classification systems achieved through effective self-regulation. The current arrangement is working well for both Netflix and the regulator, the FPB.

Supporting the economy through the creative sector

Alongside the rest of the industry, in March, Netflix worked quickly with its partners to pause all productions around the world to ensure everyone's safety. Thereafter, we launched the **Global Hardship Fund** to provide onward support for the hardest hit workers on our own productions around the world - carpenters, electricians, hair and make-up artists. In South Africa, in partnership with nonprofit organisations (IPO & SASFED), we worked to support below the line workers who have been hardest hit by the Covid-19 pandemic in South Africa, disbursing more than ZAR 8 million to 555 recipients, in one-time grants of R15,000 each. We have also strengthened our partnership with NFVF to create a pipeline of new local content as part of the film industry recovery efforts in South Africa.

Our comments and recommendations on selected aspects of the draft White Paper

Licensing requirements for audiovisual content services

As seen with the EU, there is a global trend to reform existing policy structures to further the growth of the audiovisual sector, and we commend DCDT's intent to utilize similar policy levers to stimulate development of the South African creative industries. We note that, where regulators in other countries have amended or updated their audiovisual content services regulatory frameworks, licensing requirements from the traditional broadcasting context have not been extended to new media. Instead, regulators have tended to take a light-touch and an enabling approach to regulate the online sphere: instead of licensing, for example, a simple notification requirement which allows the regulator to manage the industry but not unnecessarily restrict investment or opportunity in the process. We believe the co-regulatory approach which the FPB has adopted for online content classification is a good example of the benefit that a light-touch regulatory model can have for South Africa.

Heterogeneity between linear and non-linear services

Unlike linear services (TV channels and broadcasting spectrum), online entertainment services do not rely on finite public resources. Indeed, the licensing framework was created to provide for a means for granting exclusive access to public resources in exchange for certain conditions. This is why the licensing of broadcasting services is unique to other mediums of cultural significance including books, magazines, and music. This does not mean that other obligations proposed in the draft White Paper could not be met. For example, while book publishers and distributors have no licensing requirements, they are required to classify content with the FPB in some instances. We believe that the DCDT should seek to preserve this approach as it isn't clear from the draft White Paper that a license requirement would necessarily achieve any policy objectives that couldn't be achieved through the current approach or amendments as suggested in this submission.

Administrative and onerous burden on the regulator and OCS

The proposed revenue thresholds and requirement to furnish the regulator with annual audited financial records, details of subscribers etc. will be an administrative burden not only for an already capacity-constrained regulator, but also for online content service providers. This is coupled with the need to regulate hundreds or perhaps even thousands of online entertainment services accessible to South African citizens. Consumers might be faced with higher costs and fewer choices and fewer providers would also mean less investment in high-quality South African content, and less opportunity for local talent. Netflix's business model is premised on lowering the administrative burden, enabling consumers access unlimited catalogues at low costs and supporting a high degree of consumer choice, all of which may be significantly undermined if it were to be subject to the proposed licensing framework.

Better alignment of different pieces of legislation

Should OCS such as Netflix be considered to require an individual license, they would be subject to all the licensing obligations that apply to individual licensees - including requirements to pay annual licence fees to ICASA, make contributions to both the Universal Service & Access Fund ("USAF") and Media Development & Diversity Agency ("MDDA"), pay fees to the FPB (which broadcasters do not have to pay) and comply with HDP ownership requirements. The historically disadvantaged persons (HDP) ownership requirement is the only real differentiating factor between class licenses and individual licenses -- license fee requirements, USAF levy, MDDA contributions and periodic reporting obligations are the same for class and individual licensees under the ECA and ICASA regulations. As such, if DCDT were to mandate a licensing requirement for OCS at all, the ECA would need to be amended to align with the BBBEE framework and provide for the appropriate mechanism to enable multinational OCS (which by structure are unable to meet the equity mandate under the HDP) comply with the requirement - e.g. amendment to expressly recognise that multinational OCS could meet this obligation through Equity Equivalent Investment Programs (EEIPs) (as provided in the Codes of Good Practice published under the Broad-Based Black Economic Empowerment Act 53 of 2003 ("the BBBEE Act").

If online content providers have to obtain licences under the ECA and still be regulated by the FPB under the Films & Publications Act (as suggested in the draft White Paper), online content providers will actually be subject to more regulation than traditional broadcasters are currently subject to. Unlike online content providers, broadcasters are not required to register with the FPB, classify their content in line with the FPB's guidelines, or pay fees to the FPB. If online content providers and broadcasters are to be regulated under a single framework, there needs to be alignment between the ECA and the Films & Publications Act so that online content providers (but not broadcasters) are not subject to both regimes.

Ambiguity and regulatory uncertainty

The draft White Paper also proposes that the regulator will have the power to assess, at its discretion, whether an online content service enjoys "growing popularity" or "significant audience numbers", which would render it eligible for an individual license even where the revenue threshold has not been met in South Africa. It is our considered view that the concepts of "global size," "growing popularity" and "significant audience numbers" are fraught with ambiguity and do not appear to set clear and objective standards for determining the classification of a licensee. This creates an unduly broad discretion on part of the regulator and undermines regulatory certainty, which is needed if the South African audiovisual sector is to continue attracting foreign direct investment to grow the industry as contemplated by the DCDT.

DCDT Proposal	The draft White Paper distinguishes between linear (traditional broadcasting and online linear streaming channels) and nonlinear (on- demand video and video sharing platforms) services and argues that parity must be achieved between the two through (1) the broadening of statutory definitions; and (2) extending the licensing framework to non-linear services. The licensing framework will continue to distinguish between "class" and "individual" licences, but whether a licensee is required to hold a class or individual licence will depend on the thresholds proposed (based on annual turnover) and/or its popularity amongst consumers. Individual licensees will continue to be subject to ownership by HDPs or HDGs.
Netflix Recommendation	● There are key differentiations between linear and nonlinear services and this distinction ought to be preserved for purposes of effective regulatory oversight. ● The purpose and rationale behind why the DCDT seeks to license On-demand Content Services (OCS) should be made clear, taking into account not only the differentiation between OCS and traditional broadcasting services, but also the unique business context within which OCS are provided. This might also prevent the DCDT from trying to fit OCS into a framework that is not fit for purpose and instead opt to require notification obligations from OCS instead. ● Regulatory certainty must be achieved through clearly defined terms used to differentiate categories of licences/licensees. ● There should be better alignment between the different legislations relevant for a harmonized framework - specifically the ECA and the BBBEE Act in respect of the HDP ownership requirement - if the licensing framework is to apply to OCS such as Netflix. ● Netflix suggests that online content service providers be required to simply notify the

	regulator and be bound to appropriate regulatory obligations as would continue to be determined by the Films & Publications Board (FPB), rather than needing to obtain an individual or class licence in order to operate in South Africa.

Local content obligations

Given the nature of the services we provide, coupled with the fundamental differences in model and structure of global streaming services like Netflix (in contrast with linear TV which has limited content options), and for the reasons we set out below, it would be wholly unfeasible for Netflix to implement 30% of local South African content on its service. To be clear, Netflix is already investing heavily in local content in South Africa and we fully intend to continue doing so going forward - without the need to do so in terms of a legal obligation, but simply because it makes business sense to do so, and is in line with our business model and ethos. Our experience is that consumers prefer services which offer a compelling combination of high-quality local, regional, national and international content from which to choose. Furthermore, as we previously highlighted, South African content has found a home on Netflix and is being enjoyed by diverse audiences and tens of millions of Netflix members around the world. This continues to drive our appetite and incremental investment trajectory in local South African content.

The importance of incentivising investment across the entire ecosystem

Netflix supports the proposition that all players in the South African AV ecosystem - including streaming entertainment services - should make a meaningful contribution to local content production industries. This includes the important cultural policy objective of ensuring South African stories can continue to be made and shared on our screens.

However, given the complexity of the content production ecosystem, and the challenges facing different aspects of the industry value chain in South Africa, Netflix believes that policy solutions should not narrowly focus on local content alone, but encourage and facilitate the widest possible range of investments across the content sectors. We believe any regulatory solutions must be designed to support a broad range of policy considerations, including:

- Ensuring a skills and employment pipeline from pre to post production, to equip local talent and industry with the quality and capabilities required to attract a substantial share of the global demand for content creation, and enable the South African industry to compete effectively on the regional and global stage in the film and TV market
- Enhancing production capacity across the country - it's important to build up capabilities in other provinces (outside of Western Cape and Gauteng) to broaden South Africa's available options for physical production and stimulate the film production sector in those provinces - and by extension, enhance the broader economy.

- Ensuring continued investment in pre-production, physical production, post and visual effects, and building on existing capabilities in order to continue attracting inbound investment in the content production sectors;
- Maximising the direct and indirect economic benefits that flow from a strong production sector, through job creation to wider economic benefits such as tourism. The sector provides for a sustainable and future proof business model as the independent research of Olsberg highlights. For instance, each Netflix production supports local businesses. When a Netflix Original is commissioned, there is opportunity for writers, directors, actors, stylists, and make-up artists, as well as a long list of industries and trades that make the production of a complex series or film possible. There's also a multiplier effect with any investment: the economic impact of each of our projects in South Africa is several times greater than the actual dollars invested. This is because our productions inject huge amounts of capital very rapidly into the economy, and according to the Olsberg research, on the average, 67% of below-the-line production budgets are spent in other business sectors outside of TV and film. So there is an immediate and substantial economic impulse that Netflix's investments in South Africa delivers to the broader economy within a relatively short period of time. Given this demonstrable power to deliver substantial spend within a short space of time, policy solutions that recognize and leverage screen production as a powerful factor for driving and kickstarting economic recovery in South Africa are arguably more imperative than content quotas at this inflexion point.

Not fit for purpose

Content quotas have historically addressed linear television and radio stations and, since content quotas are often expressed as a percentage of total content to be broadcasted during a day, week or year, linear broadcasting services are better able to comply with these quotas given that they have a structured broadcasting line-up where viewers have no control over what is played.

OCS are, by nature, different to linear broadcasting services. Content quotas have proven to be ineffective in achieving cultural and content production policy objectives of stimulating demand. OCS have unlimited shelf-space and do not have finite, linear schedules. When consumers have lots of choice about what to watch, quotas don't guarantee audience engagement - only the best films and TV series, recommended to those who are likely to enjoy them, will get attention.

Potential to significantly reduce value of local content and audience engagement in South Africa

Rather than promoting South African content and production, content quotas will likely lead to harm, which would result in a regulatory regime that is counterproductive to what it is setting out to do. It is necessary to ensure that policy interventions do not unintentionally undermine the industry potential by failing to focus on encouraging the production of high-quality content that can appeal to local and international audiences.

Since there is simply not enough content across the ecosystem, a content quota could force an OCS to reduce the content it makes available on local platforms in order to comply with such quota. Less content in an age of increased consumer choice would make Netflix's service offering less appealing to consumers and would have the opposite effect of reducing local production and decreasing the availability of South African stories and voices. Reduced content would not only decrease choice and diversity, but also cause repetition and reduce overall audience engagement in South Africa. Research shows that linear broadcasting services often manage content quotas by repeating programs and relying on cheaper and largely in-house production.[4]

The possibility of a content quota that would require Netflix to rely on lower priced production would ultimately result in increased quantity of local content but decreased quality of content, which would cause significant harm to the overall appeal and reputation of Netflix's South African content (both to local and global audiences) and result in less audience engagement. Netflix will always be incentivised to choose quality over quantity given its business model, and given the fact that it would simply not make business sense to comply with content quotas that would ultimately reduce the value and economic benefits attached to local content.

Government's contributions to local content quotas

Another notable consideration for South Africa is the fact that in many of the countries implementing a local content quota - particularly in the EU - a great deal of local content is produced using government funding and support. To illustrate, the level of subsidies provided by government for local film production in Germany during 2016 is estimated at 36%[5] . There are various film funding bodies in Germany including federal and state ones. The total subsidy offered by these bodies amounts to more than EU€350 million, annually[6]. In France, at a national level, direct subsidies are available from the CNC for qualifying French productions and official co-productions. In addition, the French tax authorities offer incentives for certain international productions under the "TRIP" (the tax incentive for international productions). As a result, the French film industry is the most highly subsidised in Europe. In 2019, the total investment into theatrical film production reached around €1 billion, with about 15% being contributed by French producers, 17% by distributors and 10% from foreign funding. The rest (close to 60%) came from different sources of subsidies.[7]

There is an established connection between the level of funding and resources that governments provide to support the local production sector and the industry's ability to increase local content creation. Introduction of a local content quota in South Africa would need to be matched by infusion of requisite funding and resources by the government to help provide the wherewithal that industry would need to implement the mandate. Netflix believes that it may not be necessary to adopt this kind of approach which carries significant fiscal and resourcing pressure for government and industry alike, without a commensurate guarantee that it will succeed in delivering on the intended objectives. We propose in the following section our recommendation on what we believe to be a more feasible approach for achieving the growth

[4] See Micova Content Quotas: What and whom are they protecting? in Donders, Karen, Pauwels, Caroline and Loisen, Jan (eds.) (2013) Private Television in Western Europe: Content, Markets, Policies. Palgrave Global Media Policy and Business. Palgrave Macmillan, Houndsmills, Basingtoke, Hampshire, UK, pp. 245-259.

[5] Using information on the number of films produced, the average budget size and the amount of federal and state funding in 2016

[6] https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bildung-Forschung-Kultur/Kultur/Publikationen/Downloads-Kultur/kulturfinanzbericht-1023002189004.pdf?__blob=publicationFile

[7] https://www.cnc.fr/professionnels/etudes-et-rapports/statistiques/statistiques-par-secteur

objectives desired for the sector without introducing additional layers of complexity for industry actors.

Policy as a lever to stimulate broad-based investment across the creative value chain

We recommend that the DCDT instead consider adopting a voluntary, broad-based investment commitment that would apply to all players in the ecosystem, and ensure that all key actors are making a meaningful contribution to the local content production ecosystem - not narrowly focused on local content only, but extending to every aspect of the industry value chain where support is needed. The following principles should guide the development of such policy solution:

- The Government should replace the local content quota with a broad set of guiding principles outlining the expectation that OCS should be making a meaningful contribution to the South African content production industry
- These principles should consider and reflect that different OCS have vastly different business models, with different operating margins and economics
- The principles should meet a wide range of policy objectives (like those outlined on p. 13) and also recognize and take into account the existing ways in which companies like Netflix are already contributing to South Africa's content production sector (ranging from direct licensing of local content, to investments in local scholarships and capacity building initiatives, to the investments in on-soil production services for international shows)
- The principles should define "meaningful contributions" to South Africa's content production industry to cover a broad range of investment categories, at the discretion of the provider, provided these are substantiated by credible data proving the investments were committed in South Africa. Categories could include for example:
    - Commissioning productions;
    - Investment in co-productions;
    - Licensing South African content;
    - International productions filmed in South Africa;
    - Foreign export of South African productions;
    - Investment in direct employment in South Africa across content, productions, media, infrastructure, consultancy and other sectors;
    - Investment in scholarships, training, capacity building and other skills; development initiatives in South Africa for local beneficiaries;
    - Investment in content accessibility features and functionality;
    - Investment in physical production capacity; and
    - Investment in government partnerships, sponsorships and other policy initiatives in South Africa

- To ensure traceability and accountability, the principles could require each OCS to advise the government on an annual basis of its investments across these categories. The principles would also provide for such information sharing to be made in confidence where appropriate - for instance to maintain confidential licensing terms or to protect an OCS's competitive position in the market.

- The principles could also incorporate a periodical review mechanism to monitor and assess this voluntary investment pathway, say for over a 3-5 year period, to assess whether companies were continuing to make meaningful contributions per their commitments, or whether more action might be required.

Netflix is open to consider formalizing its meaningful contributions to the broader production sector in this manner - as a voluntary broad-based investment commitment, and we would be happy to engage the DCDT and other Departments further in this regard .

DCDT Proposal	Local content quotas are to be introduced by the regulator in a graduated manner, distinguishing between individual and class licensees and whether the service is public, commercial, or community/non-profit in nature, at a maximum of 30% of the video catalogue available in South Africa.
Netflix Recommendation	• It's important to allow the provision of local content by services like Netflix to evolve organically, driven by local and international demand, as our business model is predicated on the principles of consumer choice and the availability of a diverse range of globally sourced content. If all countries were to mandate a local content quota, it would render the model impossible to sustain. • Unduly narrow focus on local content quota could be counter-productive to the broader policy objectives to commensurately develop other aspects of the creative value chain, so should be replaced with a policy solution that enables, tracks and recognizes meaningful contribution by all players to aspects of the local industry that most require development. • This policy solution at the starting point should be articulated as a broad set of principles which would encourage a voluntary investment commitment, rather than a prescriptive regulatory obligation - this would serve to better ensure that differences in the business models, structure and economics of different OCS are factored in, and prevent these differences from impeding the OCS's opportunity to make meaningful contributions in their respective ways.

	• The 30% local content quota in the draft Whitepaper should be replaced with a voluntary commitment by OCS to a certain level of investment distributed across key aspects of the content production ecosystem, as against the direct investment in local titles alone.

Continued application of the Films and Publications Act in relation to the protection of children from harmful content

We welcome the proposal that OCS must continue to be subject to the framework already provided for in the Films and Publications Act. However, in respect of the protection of children in particular, if "online distributors" (as they will be known once the amended Films & Publications Act is promulgated) are to be subject both to the existing Code of Conduct for Broadcasting Services under the ECA as well as the FPB guidelines, OCS will ultimately be subject to more regulation than linear broadcasters. This is because linear broadcasters are currently only subject to regulation under the ECA, and this will continue to be the case based on the proposals in the draft White Paper, and are not subject to the FPB regime as they do not submit their content for classification or self-classify their content.

DCDT Proposal	The draft White Paper proposes a code of conduct for OCS in addition to the existing Code of Conduct for broadcasting services. The draft White Paper also recommends self-regulatory mechanisms to protect children from harmful content online, and with regard to content registration and classification, recommends the continued jurisdiction of the FPB, and adherence to the provisions of the FPB classification guidelines.
Netflix Recommendation	• The DCDT should develop one set of requirements (in general, but particularly for purposes of protecting children from harmful content) and to then indicate which requirements will apply to linear broadcasters which are not required, by law, to submit their content for classification, and which requirements will apply to OCS, many of which are already bound to the FPB regime. • The DCDT must also provide more clarity around how the frameworks under the ECA and the Films and Publications Act respectively will

	coincide, avoid regulatory redundancy and over-compliance or “double-compliance” for OCS; and also give thought to how it will take into account the amendments to come into effect under the Films & Publications Act itself.

Supporting SABC as a public service entity

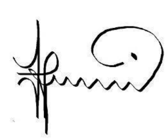
We have noted references, in the draft White Paper, to the SABC as a fundamentally creative organisation and a content-driven business. To resolve issues which impede the SABC’s ability to fulfill its mandate as a government-owned public service entity, the draft White Paper recommends a comprehensive overhaul of SABC’s funding model in line with international best practices. Netflix commends this approach and recognises the role of SABC as the national broadcaster in South Africa.

We note, from recent reports, that the SABC was considering having streaming services and other audiovisual content service providers collect TV licences on its behalf. We believe the reports to be inaccurate as it would be wholly inappropriate for the SABC to cede any part of its public service mandate to private sector actors. As such, we support the proposal in the draft White Paper and urge the government to work with the SABC in implementing the proposed policy approach. Netflix has also signed a deal to collaborate with SABC to co-produce multiple South African films and series over the next few years, and also to continue our investment in SABC’s library of local kids/family content. This is as part of our commitment to an incremental local content investment trajectory, and in continuation of Netflix’s effort to make meaningful contributions to the aspects of the audiovisual sector in South Africa that need it the most.

Conclusion

Netflix would like to thank the DCDT for the opportunity to make submissions on the Draft White Paper. We hope that the DCDT will consider and take into account these submissions. We would also be happy to engage further and provide clarification if required in any respect; please do not hesitate to contact the undersigned.

Respectfully submitted,



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